IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 832 of 2001
(Old No. 1058 of 1992)

The Municipal Board
Nainital
Through its Executive Officer .....Appellants

Vs

1. Sri Dan Singh Darmwal, Advocate (Deceased)
   S/o Late Sri Soban Singh Darmwal
   R/o Saraswati Niwas, Tallital
   Tehsil & District Nainital
1/1 Smt. Tulsi Devi W/o Late Dan Singh Darmwal
   R/o Saraswati Niwas, Tallital
   Tehsil & District, Nainital
2. The State of U.P.
3. Greater Nainital Development Authority
   Nainital, through its Chairman .....Respondents

Sri Anil Dabral holding brief of Sri D.S. Patni, learned counsel for the appellant
Sri D.N. Sharma, learned counsel for the respondent No. 1
Sri U.K. Uniyal, learned Senior Advocate appearing on behalf of the respondent No. 3.

Hon'ble B.C. Kandpal, J.

This second appeal under Section 100 of the C.P.C has been preferred by the appellant against the judgment and decree dated 17.04.1992 passed by District Judge Nainital in Civil Appeal No. 29 of 1991 arising out of the judgment and decree dated 31.11.1990 passed by Additional Civil Judge, Nainital in Original Suit No. 35 of 1988.

2. Brief facts of the case are that the plaintiff/respondent No. 1 filed a suit before the Additional Civil Judge, Nainital for damages against the Municipal Board, Nainital which was decree in favour of the plaintiff/respondent No. 1 for Rs. 15,050/- as damages vide judgment and decree dated 31.07.1990.

3. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff/ appellant- Municipal Board preferred an appeal before the District Judge, Nainital against the aforesaid order passed by the court. After hearing learned counsel for the parties and perusing the entire material available on record, the first appellate court, dismissed the appeal of the defendant/appellant and partly allowed cross objections filed by the plaintiff/respondent No. 1 and the judgment and decree of the trial court was modified to the extent that the suit of the plaintiff/ respondent No. 1 is decreed for Rs. 23,000/- against the defendant No. 3 with proportionate costs throughout. The defendant No. 1 and 2 were exempted from the liability of decretal amount with a direction that they shall bear their own costs in the court below and also before the appellate court vide judgment and decree dated 17.04.1992

4. Feeling aggrieved by the aforesaid judgment and decree, the defendants/appellants preferred this second appeal before the Allahabad High Court, which has been transferred to this Court after creation of separate State.

5. Heard Sri Anil Dabral holding brief of Sri D.S. Patni, learned counsel for the appellant, Sri D.N. Sharma, learned counsel for the respondent No.1 and Sri U.K. Uniyal, learned Senior Advocate appearing on behalf of the respondent No. 3 and perused the record.

6. Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that, this second appeal is concluded by finding of facts, I, therefore, do not find any ground to interfere in the impugned judgments and orders

passed by the court below. Both the courts below have recorded concurrent finding of fact which cannot be interfered with at the stage of second appeal. I also do not find any substantial question of law involved in this case.

7. The second appeal lacks merit and is liable to be dismissed.

8. Accordingly, the second appeal is dismissed in-limine

(B.C. Kandpal, J.)

08.12.2006
ASWAL